The Solicitors' Journal

Vol. 94 January 21, 1950 No. 3

CURRENT TOPICS

Shortening the Long

AN aim which used to be considered almost as hopeless as that of squaring the circle will be achieved by the simple process of an Order in Council, pursuant to a recommendation by the Council of Judges of the Supreme Court, in which the Lord Chancellor has expressed his concurrence. The recommendation, which was made on 11th January, was that the Long Vacation should in future begin on 1st August and end on 30th September. So another ancient privilege of the lawyers will go, but it is doubtful whether, except in the case of the Bench, the sacrifice is more than nominal, for the time is gone when it was a fair answer for Rosalind to give to Orlando's question, "Who stay's time still withal?" "With lawyers in the vacation; for they sleep between term and term, and then they perceive not how time moves." In those days town planning inquiries, departmental tribunals, and even county courts which now keep many solicitors and barristers busy in the Long, were things of the future. The self-sacrificing spirit of the Bench is underlined by a further recommendation, in which the Lord Chancellor has concurred, that judges of the Supreme Court should normally sit from 10.30 a.m. to 4.15 p.m., with an interval for luncheon. This may seem no sacrifice to the layman, but lawyers appreciate that these hours are very much less than the actual working hours of both Bench and Bar.

Legal Costs and Lawyers' Earnings

WILLMER, J., a member of the Evershed Committee on the Practice and Procedure of the High Court, in an address to the Liverpool Luncheon Club on 4th January, said a word in defence of lawyers when he told the club that although litigation costs were more in this country than anywhere else, except perhaps the United States, the solicitor was in no way over-remunerated. He was entitled to recover only 50 per cent. more than he was entitled to before World War I. He said that there was something wrong with a state of affairs in which it does not pay a solicitor to contest a case for a client and where a temptation may exist to settle out of court at perhaps less than the client otherwise would have got. It was also far from true that members of the Bar were extremely wealthy. There were very few leaders who made outstanding incomes and they were exceptional people and the fees were paid in respect of exceptional cases. It was a matter of public interest that the Bar should continue to attract the best people, because the Bench was recruited from it. As to fusion, Willmer, J., said that the result so far as costs were concerned would probably prove negligible. After referring to various possible methods of reducing the cost of litigation, Willmer, J., put forward, as a just means of dealing with the question of costs, that if the amount which the winner was entitled to recover from the loser were limited in some way, possibly by the imposition of a rigid scale, both parties would be a great deal more careful in incurring costs. To justify this, the speaker said that it was a rare case in which all the right is on one side and all the

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wrong on the other. Often a case is very evenly balanced, and not until the last minute does the judge know which way he is to go.

Fitness to be a Solicitor

AN Australian case of unusual interest to solicitors is reported in 77 C.L.R. 403. The following remarks are taken from the joint judgment of LATHAM, C.J., DIXON, J., and WILLIAMS, J., at pp. 424–425: "There must be a strong disinclination to admit to the profession of a solicitor any person to have been shown ever to have been guilty of improper conduct. It is a disinclination founded upon the unsafety of such a course and the need of strictness in maintaining the standards of the profession." After referring to the false steps of youth, the court said: "A fine war record is something which ought to count in such a question. In short, this appears to be a case in which this court ought to give effect to the view that the adverse conclusions that might otherwise be drawn from an unsatisfactory beginning may be displaced by a completely satisfactory subsequent career sustained over a lengthy period of time. The true conclusion from all the material before the court is that the appellant is now a fit and proper person to be admitted as a solicitor."

Vertical Division of a House

THE Central Land Board have announced that no development charge is payable under the Town and Country Planning Act, 1947, in respect of the division of a house, which on 1st July, 1948, was used as a single dwelling-house, into two or more separate buildings by the erection of a vertical wall or walls, and the use thereafter of the separate buildings as dwelling-houses. To this we would add the reminder that such an operation appears to be a material change of use within s. 12 (3) of the Act and would therefore require planning permission although no charge is payable. See generally 93 SOL. J. 259–261.

Formal Acknowledgment of Documents by the Registrar of Joint Stock Companies

IN February, 1947, the Worshipful Company of Solicitors of the City of London drew the attention of the Registrar of Joint Stock Companies to the amount of time wasted in solicitors' offices by the practice of his department when sending formal post card acknowledgments of communications from solicitors of putting only the official number of the company concerned without either its name or quoting the solicitors' reference number, and asked that at least the solicitors' reference number, if not the name of the company, should be included in the typed or manuscript heading of the post card acknowledgment. The Company was then informed that on grounds of economy it was not possible to include the names of companies on acknowledgment cards, but that if solicitors and others forwarding documents to the Registration Office cared to include the initial letters of the words included in the names of the companies or other short references at the foot of the returns near to the names of their firms as being responsible for the registration, the Registrar would arrange for the initials or reference letters to be quoted. The Company was also informed that the Registrar issues a thousand acknowledgments a day, and that to insert the name of the company would involve two additional clerks on the staff. After further consideration the Court decided that under the circumstances their original suggestion should not be pressed. The matter was recently again raised with the Registrar and the Company has now been informed that the practice of acknowledging the receipt of company documents by the registered number instead of by the name of the company was instituted more than twenty years ago as a measure of economy and the considerations which prompted the change then are even more compelling to-day. The Registrar does not feel justified in asking for the additional staff which would be required to comply with the Company's request. He informs the Company, however, that the arrangements which he previously suggested still stand and the attention of the staff engaged in acknowledging documents is being directed to the matter.

Identity of Price Control Inspectors

THE Board of Trade made an announcement on 9th January concerning the report of a case in which it was stated that a Surrey draper was induced to part with goods to a person who represented that he was a Board of Trade inspector and said that the trader was selling goods at less than the maximum price. The Board desired to make it known as widely as possible that inspectors appointed under the Goods and Services (Price Control) Acts all carry a certificate of their appointment which it is their practice to produce on disclosing their identity. Traders can readily protect themselves from fraudulent practices of the kind referred to in that newspaper report by requiring any person who claims to be a price control inspector to produce his certificate of authority, and they should refuse to comply with any requests or requirements on the part of a person claiming to be such an inspector unless and until such a certificate is produced. The Board added that the prices fixed by the Board of Trade are of course maximum prices and the sale of goods below such prices would certainly not be a matter for official complaint.

Transport Commission's Legal Service

ACCORDING to a recent statement, a legal service has been established to take over the duties which have been performed by the regional solicitors of the Railway Executive, and by the solicitors to the London Transport Executive, the Docks and Inland Waterways Executive, and the Tilling Association. It will generally carry out the legal work of the commission and all executives, other than that which has been undertaken on behalf of certain of the executives by private firms. Mr. M. H. B. Gilmour is chief solicitor to the commission and is in charge of the new service. The deputy chief solicitor is Mr. R. P. Humphrys. Both have offices at Euston station, and the following divisions have been established: *Parliamentary and General.* — Assistant chief solicitor: Mr. H. A. Chapman, 4 Cowley Street, S.W.1, litigation and prosecutions. Assistant chief solicitor.—Mr. R. Chitty, Paddington Station, W.2. *Conveyancing.*—Assistant chief solicitor: Mr. E. Coleby, Euston Station, N.W.1. The following members of the legal service have been appointed to act as advisers to the London Transport Executive and the Docks and Inland Waterways Executive, respectively:—Mr. S. G. Jones, 55 Broadway, S.W.1, and Mr. E. A. Boothroyd, 22 Dorset Square, N.W.1. Mr. H. L. Smedley retains his position as legal adviser and solicitor to the Railway Executive, and Mr. G. W. Quick Smith will continue to act as secretary and legal adviser to the Road Haulage Executive.

Index to Volume 93

Enclosed with this issue is the Annual Index and List of Statutes to Volume 93, covering the whole of the year 1949. Subscribers who desire to have their issues bound should now forward the numbers, together with the Index, to the Binding Department, 88/90 Chancery Lane, London, W.C.2. Instructions and remittances should be sent separately.

ROAD CONSTRUCTION COSTS—II

If for some reason it is desired to lay out roads and sewers before it is certain exactly what houses will be built, it may be necessary to get planning permission first in respect of the roads and sewers. The work is certainly an engineering operation for which planning permission is required, and there is no exemption covering it. For instance, Class 9 of the First Schedule to the General Development Order permits the carrying out of works for the maintenance or improvement of an unadopted street or private way without planning permission, but such works must be within the boundaries of the street or way. Similarly, as a result of Class 12 of the Schedule to the Development Charge Exemptions Regulations no development charge is payable on the carrying out of works of maintenance or improvement of an unadopted street or private way whether or not the work is within the boundaries of the street or way. On the other hand, it will be necessary to apply for assessment of development charge on the construction of a new road, although in most cases no charge will be payable. If agricultural land is cut up by having roads constructed across it, the value of the land as agricultural land will be reduced and not increased. Consequently there will be no development charge. The roads will, of course, increase very materially the value of the land when building operations commence, and the development charge will be payable in respect of the building operations.

The view of the Central Land Board is that a developer should apply to the Board to assess the complete development charge for the whole unit before works such as the construction of road works or sewers are carried out on the land. See Central Land Board Practice Notes, First Series, para. 93, which states: "the Board will normally (other than in very large estates) accept as the unit for fixing the development charge an area of land which is likely to comprise one continuous development comprised in one planning permission."

It is essential to bear in mind that under the Town and Country Planning Act, 1947, s. 70 (2), the Board, in determining a development charge, are to have regard to the difference between the consent value, i.e., the value of land with the benefit of the particular planning permission, and the refusal value, i.e., the value of the land without the benefit of such permission. Where the whole of an area of land is being developed by the provision of roads and the building of houses, and the whole unit is regarded as one, it is reasonably possible to assess the additional value caused by the grant of the planning permission. The cost of road works, of course, will have to be taken into account. If a person will give a certain sum per square yard for the land as a housing site with complete roads, and if the existing use value can be reasonably assessed, then the development charge will depend on the difference between the two after deduction of the cost of the provision of roads.

The real difficulty arises in cases of what was formerly known as "outline" development. This occurs if one person develops land by providing it with roads and sewers but does not build houses himself, but instead sells individual plots or small numbers of plots to persons who wish to build houses. The provision of the roads and sewers does not add to the refusal value of agricultural land, but probably takes away part of that value. Consequently, if the outline developer sells the land to a builder who applies for assessment of the development charge, on first principles it would appear that the builder would have to pay as development charge the difference between the building site value and agricultural value without getting any allowance for road charges. If this were the case then the builder would not wish to pay more than the existing use value for the land and the outline developer would not be in a position to recover any part of his expenditure on roads and sewers. This difficulty has been foreseen by the Central Land Board and the Board have dealt with it in paras. 94–96 of their Practice Notes, First Series. They say that in assessing the consent value they will allow the developer (the person who constructs the road) the proper allowance for his effective capital investment, together with a reasonable return for profits and risk on his investment. In doing this, however, the Board lay down a very stringent condition. They provide that this allowance can be made only if the developer (i.e., the road maker) is willing to pay the development charge, and they refuse to give the same allowance if he sells the land to another person leaving that person to pay the development charge. Consequently, an estate developer should always approach the Board to determine the development charge on a reasonable unit of development before starting to invest money on improvement. If he is not intending to erect the houses himself he may then sell the land inclusive of development charge. We suspect that the real reason why the Central Land Board have insisted on this procedure, as a condition for enabling the outline developer to recover his expenditure, is in an endeavour to make him sell at existing use value. There is no doubt but that a builder buying a plot with roads made, inclusive of development charge, will be better able to ensure that no more is paid than he would have paid if the 1947 Act had not been passed than if he bought the land without the benefit of a development charge and then proceeded to have it assessed himself.

In order to be able to advise his clients adequately a conveyancer should be familiar with the practice in these matters, but no serious conveyancing problem arises. A solicitor acting for a purchaser of a building plot where the roads and sewers have been constructed and development charge paid should obtain production of the planning permission and certificate of payment of development charge (if any) and, if they relate solely to the land being sold, they should be handed over. The planning permission may cover the building of houses in the manner proposed by the purchaser, but care should be taken that such permission includes the houses of the exact type proposed to be built or, alternatively, that the purchaser is warned that he needs to get a further planning permission. It will be remembered that the benefit of a planning permission passes with the land unless the planning permission itself provides otherwise (Town and Country Planning Act, 1947, s. 18 (4)), and so it is not necessary to refer to the permission either in the contract or in the conveyance. Similarly, a determination of development charge has effect in relation to development by any person for the time being interested in the land unless the Board have exercised their power to direct that the determination shall cease to have effect on transfer of an interest in the land (1947 Act, s. 72 (1)). The Board have made it clear that they will not issue any such direction other than in their certificate of satisfaction of development charge or in a consent to proceed without payment of the charge and so, by inspecting the document issued in the particular case, a purchaser's solicitor can ascertain whether the development charge can later be increased. If sale is by an outline developer by the procedure recommended by the Board it can reasonably be assumed that the Board will have granted a certificate fixing the charge in such a way that a purchaser will be safe in acting on it.

J. G. S.

DISQUALIFICATION AND "SPECIAL REASONS"

SECTION 35 (1) of the Road Traffic Act, 1930, provides that "... it shall not be lawful for any person to use, or to cause or permit any other person to use, a motor vehicle on a road unless there is in force in relation to the user of the vehicle by that person or that other person, as the case may be, such a policy of insurance or such a security in respect of third-party risks as complies with the requirements of this Part of this Act." Subsection (2) provides that in addition to other penalties for contravention of the section "a person convicted of an offence under this section shall (unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification) be disqualified for holding or obtaining a licence under Part I of this Act, for a period of twelve months from the date of conviction."

This section of the Act is similar to s. 15 (2) (Driving when under influence of drugs or drink) inasmuch as in both cases the disqualification follows automatically by operation of law *unless* "special reasons" are shown, whereas under s. 11 (3) (Reckless or dangerous driving) the *convicting court* must order disqualification unless "for ... special reasons" it "thinks fit to order otherwise." It was on s. 15 (2) that the first authoritative statement on the meaning to be attached to the words "special reasons" was given by Lord Goddard, C.J., in *Whittall* v. *Kirby* (1946), 90 SOL. J. 571. A special reason is a reason which is "special to the facts constituting the offence," i.e., not hardship, or previous clean record, etc. (see "Road Traffic—Special Reasons," 91 SOL. J. 440, and "Disqualification and Endorsement of Driving Licences," 92 SOL. J. 476). Nor is the fact that disqualification would be "too severe a penalty in the circumstances" a special reason (*Williamson* v. *Wilson* [1947] 1 All E.R. 306).

In such circumstances as those of *Williamson* v. *Wilson*, however, there was always a loophole for the justices inasmuch as they could dismiss the charge under the Probation of Offenders Act, 1907, when, since no conviction was made, no question as to whether special reasons existed or not arose (*Blows* v. *Chapman* [1947] 2 All E.R. 576). Since the repeal of the Act of 1907 by the Criminal Justice Act, 1948, a conviction must be recorded before a probation order or an order of absolute or conditional discharge can be made (ss. 3, 7), but a special provision in s. 12 (2) enables the conviction to be disregarded for the purpose of disqualification (see 93 SOL. J. 532). The decision whether to make a probation order is a matter for the justices' discretion (*Quelch* v. *Collett* [1948] 1 K.B. 478), but that there are limits to this discretion is clearly seen from *Gardner* v. *James* (1948), 92 SOL. J. 732, wherein the justices were reversed, Lord Goddard, C.J., saying "... the court is driven to the conclusion that the only reason they refused to convict and proceeded under the Probation of Offenders Act, was to avoid imposing a disqualification."

An honest belief that one's insurance policy covers third-party risks whilst the vehicle is being driven by a friend, when in fact it is limited to owner-driver only, is not a special reason (*Knowler* v. *Rennison* [1947] K.B. 488: *per* Lord Goddard: "If he does not understand his policy, he can seek advice and instruction," otherwise, "we are unable to see that he has any ground for believing that the policy covers something which it does not"). But, on the other hand, special reasons did exist where an insured had been issued with a policy whose terms were at variance with the policy for which he had asked, and also different from the temporary cover note which he had received (*Labrum* v. *Wilkinson* [1947] K.B. 816). Whilst pointing out that it is the duty of the insured to familiarise himself with the terms of his policy, Lord Goddard said that "he might well be excused for not having read the policy and found out that it had not been issued in accordance with the proposal."

An interesting unreported case, *Colman* v. *Friend*, was recently decided at the West Kent Quarter Sessions which it is submitted falls midway between *Labrum* v. *Wilkinson* and *Knowler* v. *Rennison*. The appellant and a friend, X, pleaded guilty in the magistrates' court, the first to permitting a motor-cycle to be driven without there being a third-party insurance in force, X to driving the motor-cycle whilst uninsured. Both Mr. Colman and X had for some years been in the habit of riding each other's machine and had satisfied each other that their policies covered this procedure. Both had also dealt with the same insurance brokers for some years. Prior to the offence X received notice that his insurance was due for renewal, and on visiting the broker's office was given a blank proposal form, which he signed and which was later filled in by the broker or one of his staff. X observed that this form was issued by a company different from that with which he had hitherto been insured. He was subsequently issued with a certificate of insurance and later a policy, both of which he read. On the day of the offence X visited Mr. Colman on his motor-cycle and was shown a new machine which the latter had purchased. On X's asking for permission to try the machine, Colman replied: "No. It is not yet insured." He had not yet, in fact, transferred the new machine to his existing policy. X replied: "That is all right. My policy covers me when riding someone else's machine." Mr. Colman thereupon recalled that they were both insured through the same broker, and had previously ridden each other's machine without difficulty, and gave permission. X was stopped by a policeman for braking too sharply at a traffic signal, and was asked for his insurance certificate. On being asked whether this was his machine, it was pointed out to him that the certificate did not cover him whilst riding Colman's machine. X tried to point to the clause covering him, but was obliged to admit that he was not covered.

The question of special reasons was not argued in the magistrates' court, and on appeal against disqualification counsel for the appellant submitted that it was the broker's duty to draw X's attention specifically to the radical change in the cover afforded him by the new policy. There were special reasons inasmuch as both had had similar policies and Colman honestly believed that X was still covered. Counsel for the police submitted that the case was entirely covered by *Knowler* v. *Rennison*. Mr. Colman had merely relied on X's statement that he, X, was covered. He had not asked to see X's current insurance certificate, nor taken any other step to satisfy himself. The Appeal Committee found that there were special reasons in the commission of the offence. Both X and Mr. Colman had frequently used each other's bicycle quite properly and with due cover, and had looked at each other's certificate on some other occasions. X had not had his attention drawn to the change of cover and, although he had read the certificate and policy, the fact that he still believed he was covered was shown by the fact that he tried to draw the police officer's attention to the relevant clause. X had arrived on a motor-cycle and Mr. Colman had naturally assumed he was covered in the way he had hitherto been covered. The disqualification would be removed.

In *Kerr* v. *McNeill* [1949] N.I. 19, the Northern Ireland Court of Appeal found special reasons where the accused,

having told his farm labourer to renew his licence and given him time off to do so, ordered him to drive a tractor for a short distance on the road. In fact the licence had not been renewed, and the labourer was, therefore, not covered by the farmer's policy of insurance. Andrews, L.C.J., distinguished the farmer's carelessness in not inquiring whether the licence had in fact been renewed, from that of one who carelessly omits to renew a policy, or who carelessly fails to acquaint himself with its terms. Again, in *Reay* v. *Young* (1949), 93 SOL. J. 405, special reasons were found where a husband had permitted his wife to drive 150 yards, very slowly, on a lonely moorland road when she did not hold a licence. The only other traffic on the road at the time was a policeman. Lord Goddard mentioned, in passing, that he was precluded from considering whether she or her husband, who was in the car, was "driving," because both had pleaded guilty.

Disqualification on conviction for being in charge of a motor vehicle whilst under the influence of drink so as to be incapable of having proper control, and the question of special reasons, have been before the King's Bench Division in two very recent cases. A driver who, on returning to his car, realises he is drunk, gets into the back seat, and decides to wait for one of his servants to drive him home or alternatively to take a taxi-cab, is still sufficiently "in charge" to be convicted, but has special reasons whereby he should not be disqualified (*Jowett-Shooter* v. *Franklin* [1949] 2 All E.R. 730). But if he takes control of the car it will be otherwise. Thus, in *Chapman* v. *O'Hagan* (1949), 93 SOL. J. 694, the defendant, having been kicked by a horse, was under a course of "M and B" drugs and, not knowing that their effect would be to render him more easily intoxicated, consumed his normal moderate amount of intoxicants. He was seen staggering near the car, drove it across the road and half-way on to the pavement with no lights on. The justices found special reasons in the fact that the defendant did not know that the drugs would exaggerate the effect on him of his normal consumption of alcohol. Lord Goddard thought that whilst he himself would "have had no difficulty in finding that there was no special circumstance," yet could not find himself able to say that the justices' finding was perverse, and hence was unwilling to reverse it. Croom-Johnson, J., whilst agreeing, felt that the justices should have considered whether special reasons existed at the moment when the defendant took charge of the car, not at the moment when the alcohol was consumed, and Lynskey, J., thought that the fact that he had taken charge of the vehicle whilst under the influence of drink and drugs ought to have been sufficient to prevent the justices exercising their discretion in the defendant's favour. The appeal of the police officer was, however, dismissed.

G. H. C. V.

Costs

ALLOWANCES FOR PRINTING

OUR recent notes on disbursements lead us to a consideration of the regulations and practice with regard to printing.

In conveyancing matters which, it will be recalled, are not necessarily confined to dealings in land, but may also include other matters which are not actually litigious, a solicitor may be called upon to copy or engross documents, and if he does this in his office then he will be entitled to the appropriate charge which, normally, is 4d. per folio for copying and 8d. per folio for engrossing.

Where, however, a number of copies are required, or where, as in the case of memorandum and articles of association or special or extraordinary resolutions in company work, the relevant statute calls for the filing of a printed copy (see s. 143 of the Companies Act, 1948), then the solicitor is bound to go to a printer for the copies, and he will not himself be entitled to any profit beyond a charge for a copy of the document for the printer, attending the printer therewith, examining the proof and attending on the printer instructing him as to the number of copies to be struck off.

For the attendance on the printer the solicitor will be entitled to charge 10s. for each necessary attendance under Sched. II of the Solicitors Remuneration Order, 1882, plus the authorised increase. No charge is provided by that regulation for examining a proof print, but by custom it has become the practice to charge at the rate of 2d. per folio. In addition to these profit charges the solicitor will, of course, charge the actual amount of the printer's bill. This practice is followed in all cases where documents are printed and the costs fall under Sched. II, *supra*.

At the present time the copying of documents by photography is becoming increasingly popular, and the correct method of charging for the copies in this case is a subject on which there is more than one school of thought. To take a simple case, it is much more expeditious and, moreover, has the additional merit of obviating typographical errors or errors of transcription if, say, a deed of settlement is copied by photography, than if it is copied by hand or on a typewriter. If copied by hand or by typewriter the solicitor would be entitled to charge for the copy at the rate of 4d. per folio, and, since Sched. II provides that fee for "fair copying" a document—that is making a clean copy thereof—there seems to be no reason why a similar charge should not be made in all cases, whatever the copying process employed, provided the solicitor bears the cost of the process himself. Schedule II does not lay down any hard and fast rule as to the means by which a document is to be copied to entitle the solicitor to the remuneration of 4d. per folio. Some justification may be found for this view in s. 20 of the Interpretation Act, 1889.

However that may be, it would, at times, be difficult to estimate the length of a document in folios, since the nature of the document might well render such a procedure impossible. In such a case, if the document is copied by photography, there is no provision under Sched. II for charging the client with anything beyond the actual amount disbursed in obtaining the photograph, together with a charge for attending on the photographer and instructing him.

There is, however, reasonable ground, in suitable cases, for charging the client with the cost of making a copy by tracing or drawing, instead of debiting him with the photographer's bill, basing the charge on a rate for a clerk's time at, say, 6s. 8d. per hour according to the time which it is estimated a clerk would take to prepare the tracing or drawing. This procedure is equitable and within the spirit of the regulations governing costs, but, of course, it has no statutory authority. It is, however, a procedure which has been given some recognition in the profession.

We now come to the charges which may be made in connection with printed documents used in an action or matter to which the scale of fees laid down in R.S.C., Appendix N, applies. Here we find that the regulations require certain documents to be printed. Thus, Ord. 19, r. 9, requires that all pleadings which exceed ten folios in length shall be printed, whilst Ord. 66, r. 3 (1), states that where a document is required by the rules to be printed, then it may be either printed or reproduced by type-lithography or by stencil duplicating.

If the statement of claim or other pleading exceeds 720 words in length, without including the endorsement, it must be printed or type-lithographed or stencil duplicated, and in this respect it is important to note that a pleading, according to s. 225 of the Judicature Act, 1925, includes any statement in writing of the claim or demand of the plaintiff, and of the defence of any defendant thereto and of the reply of the plaintiff to any counter-claim of any defendant. The pleading, however, to come within the ambit of r. 9, *supra*, must be in the form set out in r. 11. It follows that if a specially endorsed writ exceeds 720 words in length, without counting the endorsement, then it must be printed before it is served, since it will constitute a pleading.

It is of interest to note in passing that in counting the folios in a document r. 9, *supra*, is the authority for stating that every figure must be counted as a word.

Turning now to the charges allowed for printing documents we find that these are adequately covered by regulation, for Appendix N permits a charge of 4d. per folio for a copy of the document for the printer, in those cases where the document is required to be printed by the rules, and a charge of 2d. per folio for examining the proof print. Moreover, the solicitor who incurs the printing charges is entitled to charge in his bill of costs the amount actually paid to the printer for printing, but the charges of the latter must not exceed 3s. 8d. per folio for twenty prints, with an addition of 2½d. per folio for every ten prints beyond the first twenty. This allowance for printing includes the cost of the paper.

Under Ord. 66, r. 7 (*c*), a party printing shall, on demand, supply to any other party up to ten prints of the pleading or other printed document on payment therefor at the rate of 2d. per folio; and in charging the printer's bill in his costs the party who incurred such expense must give credit for whatever he receives in respect of prints sold. It may be noticed here that the charge of 2d. per folio allowed under Ord. 66, r. 7 (*c*), for supplying printed copies is not subject to the 50 per cent. increase authorised by Ord. 65, r. 10A, since that increase only applies to the fees set out in Appendix N.

In addition to charging the printer's bill, or the balance thereof, there will be allowed to the solicitor printing, as profit costs, a charge of 2d. per folio for every printed copy of the pleading served on the opposite party, or supplied to the court or judge or to counsel for use in court. This fee of 2d. per folio will attract the 50 per cent. increase pursuant to Ord. 65, r. 10A, since it is a fee authorised by Appendix N.

It will be noted that what has been written about the allowances for printed copies applies equally to type-lithoed and stencil duplicated copies, with the same limitation with regard to the cost.

The allowances provided above apply to pleadings and other documents which are required to be printed by the rules of the court. Where, on the other hand, documents are printed, type-lithoed or stencil duplicated for convenience then it is customary to allow for each copy necessarily used at the rate of 4d. per folio, the solicitor, of course, bearing the cost of the printing, etc., himself. Here again, having regard to s. 20 of the Interpretation Act, 1889, the same rule might well apply to photographic copies of documents, and, indeed, there is no reason why it should not do so, except that the same difficulty which we envisaged earlier would arise inasmuch as it might well be impossible to estimate the length of certain documents in folios.

This applies particularly to plans and similar documents. However, in such cases there is no reason why, as suggested earlier, the cost of tracing copies should not be charged at the rate of, say, 6s. 8d. per hour if this would be more remunerative than charging the actual cost of the photographic prints.

Where the solicitor himself possesses a duplicating machine, and this is frequently the case at the present time, it will usually be found to be far more remunerative to run the requisite number of copies off on the machine and charge for the copies necessarily used at the rate of 4d. per folio, than to make a number of copies on a typewriter, since the carbon copies are allowed only at 2d. per folio.

J. L. R. R.

Company Law and Practice

NOMINATION OF DIRECTORS BY THIRD PARTIES

It is not uncommon to find in the articles of association of limited companies a provision for the nomination of directors by shareholders, by debenture-holders or by a director or permanent director of the company. Such provisions are frequently seen in the articles of family businesses run as private companies—in such cases a governing director often has power, during his lifetime or by will, to nominate a successor, and the object of the provision is generally to secure continuity of control by the family of which the governing director is a member. Another common instance is where money is lent to a company and, as part of the security for the loan, the company agrees that the lender shall have power to nominate one or more directors to its board. In this manner the lender is able to exercise some degree of supervision, if not of actual control, over the direction and management of the company's affairs. It has always been of importance to exercise great care in the framing of these provisions and a further possible difficulty now arises by virtue of the Companies Act, 1948, s. 184, under which a company in general meeting may remove a director by ordinary resolution.

The main difficulties which have arisen in the past may be stated as follows: first, a mere power to nominate directors may not be effective in securing their actual appointment, and secondly the court may not readily grant specific performance of an agreement by virtue of which the directors are to be nominated or appointed. Perhaps the most practical method of illustrating these difficulties is by a brief examination of two decided cases, namely *British Murac Syndicate, Ltd.* v. *Alperton Rubber Co., Ltd.* [1915] 2 Ch. 186 and *Plantations Trust, Ltd.* v. *Bila (Sumatra) Rubber Lands, Ltd.* (1916), 114 L.T. 676. In the *British Murac* case, there was an agreement binding on the defendant company by which it was provided that so long as the plaintiff syndicate should hold 5,000 shares in the defendant company, the plaintiff syndicate should have the right of nominating two directors on the board of the defendant company. A clause to the same effect was contained in the articles of the defendant company. The plaintiff syndicate nominated two individuals as directors and the defendant company refused to accept the nomination. The wording of the relevant article was as follows: "The British Murac Syndicate Limited, so long as it holds at least 5,000 shares in the capital of the Company, shall have the right of nominating two directors on the board of the Company . . ." Sargant, J., held that, on the true construction of these words, a mere

nomination was sufficient to complete the appointment of the directors and that no further step was necessary. In this case Sargant, J., also held that the agreement was capable of being specifically enforced, and that the two persons nominated by the plaintiff syndicate were directors of the defendant company. Sargant, J., did, however, qualify his judgment to the extent of allowing the defendant company to apply for an injunction, should the company object to the appointment of one of the directors on the ground that he might be *personally* unacceptable.

In the *Bila* case the court took the opposite view. In that case Plantations Trust, Ltd. (" the trust company ") agreed to lend to Bila (Sumatra) Rubber Lands, Ltd. (" the B company ") certain moneys on the security of debentures to be issued progressively. It was provided in the loan agreement, *inter alia*, as follows: " the company will appoint two persons to be nominated by the trust to be directors of the company . . ." The B company's articles were also altered to contain an article the material part of which was as follows: the trust company, during such time as any of the debentures shall be issued and outstanding, " shall be entitled to nominate from time to time as they shall think fit two persons to be directors of the company . . ." Two directors were duly nominated and they were appointed by the company. Some time afterwards, owing to the outbreak of the 1914 war, the further issue of debentures was suspended by mutual agreement, and the B company borrowed money from the Y company and gave the Y company power to nominate directors to its board. Of the directors nominated by the trust company, one resigned and the other was disqualified for non-attendance. The trust company then nominated two further directors and sought to restrain the nominees of the Y company from acting as directors. Eve, J., held that a right to nominate and a right to appoint were not the same thing, and that, in the circumstances, the contract was not one in respect of which specific performance should be decreed. In his judgment the following passage puts the point clearly: " the contract is this, the trust company shall nominate and the Bila company shall appoint; that is to say a power to nominate is given to the trust company and an obligation to appoint is imposed on the Bila company, but such being the construction of the contract, I am not going to hold that the mere nomination by the trust company brought about the result of appointing these two individuals directors of the Bila company." Eve, J., went on to distinguish the wording of the contract in the *British Murac* case and said that he could not possibly hold that the performance of half the contemplated procedure should be treated as of the same efficacy as its full performance.

The Companies Act, 1948, s. 184 (1), provides as follows: " a company may by ordinary resolution remove a director before the expiration of his period of office notwithstanding anything in its articles or in any agreement *between it and him.*" The effect of this section in the case of a life governing director and his nominated successor is quite clear, and there is nothing to stop his removal by ordinary resolution, unless, of course, he was appointed before 18th July, 1945. It is clear, then, that nothing contained in the company's articles and no agreement between the company and the director can limit the company's power to remove him by ordinary resolution although the director may have a remedy in damages.

On the other hand, what is the position where there is an agreement with a third party, binding on the company as in the cases above referred to? It would seem that the court could hardly interfere to prevent a company from removing an individual director, as this would probably not even be in breach of contract, since another individual could probably be nominated or appointed in his place. It would therefore seem that the court would not grant an injunction to restrain the removal of any named individual. On the other hand, the court might order the specific performance of a contract similar to that in the *British Murac* case and, if the nominated directors had already been removed under s. 184, order the company to reappoint the evicted directors or others in their place, with a proviso that the company be at liberty to apply for an injunction, should the company object to the appointment of one or more of the directors on personal grounds. If the court were to make such an order, it would seem that, despite s. 184, the subsequent removal of the nominated directors, except perhaps after the lapse of a reasonable interval of time, would be in contempt of court. In the *British Murac* case the company had power by its articles to remove any director by extraordinary resolution, and the point had arisen in argument whether the company could use the relevant article to remove the nominated directors. Sargant, J., contented himself by saying that he could not imagine the company, having regard to the respect which is ordinarily shown to the decision of a court of justice, would desire to make use of an article for a purpose for which it was never intended. It is probable that in the majority of cases good sense would ultimately prevail. It may be, however, that the shadow cast by s. 184 will make the court less ready than heretofore to grant specific performance of these contracts, but it is unwise to jump the gun, especially when dealing with cases which by their very nature must be decided on their own merits.

N. P. M. E.

OBITUARY

MR. H. T. DUTTON

Mr. Hugh T. Dutton, retired solicitor, of Chester, died on 4th January.

MR. S. L. HEASMAN

Mr. Stanley Leonard Heasman, managing clerk to Messrs. Moodie, Randall & Carr, of London, E.C.2, died on 22nd December, aged 40.

MR. F. W. HORNE

Mr. Frederick William Horne, of Whitby, died on 25th December, aged 92. Admitted in 1880, he practised for a time but later joined his family business, Horne & Son, Ltd., proprietors of the *Whitby Gazette*.

MR. W. C. JACKSON

Mr. William Christopher Jackson, solicitor, of Birmingham and Solihull, died on 17th December, aged 63. He was admitted in 1923.

MR. F. VIVASH ROBINSON

Mr. Frederick Vivash Robinson, solicitor, senior partner in the firm of Vivash Robinson & Co., of Clement's Inn, Strand, W.C.2 (also at Clapham Junction, Streatham and Worcester Park, Surrey), died on the 1st January, 1950, at the age of 64. He was admitted in 1912.

MR. A. SIDEBOTHAM

Mr. Arthur Sidebotham, solicitor, of Offerton, Stockport, died recently, aged 87. He was a life member of Stockport Incorporated Law Society, of which he was president in 1919–20. He was admitted in 1885.

SIR LEONARD H. WEST

Sir Leonard Henry West, chairman of Buckinghamshire Council from 1921 to 1947, died on 1st January, aged 85. He was knighted in 1933. A solicitor, he was at one time Tutor to The Law Society.

A Conveyancer's Diary

RECENT STAMP DUTY CHANGES

THE sections of the Finance Act, 1949, which made some changes in the law relating to stamp duties have not attracted much attention, for the very good reason that the changes which have been made are themselves of a minor character, if the lifting of the duty on bonus issues of securities introduced by the Finance Act, 1947, is disregarded. The abolition of this duty is made by s. 34 of the Act, and s. 35 is concerned with the repeal of certain other duties, of which a few are of direct interest to the conveyancer.

The abolition of these duties is effected by the repeal as from the 30th July, 1949 (the date of commencement of the Act), of certain headings in Sched. I to the Stamp Act, 1891. These headings include (i) the heading "Appraisement or valuation," so that, for example, stamp duty will no longer be attracted by a valuation of a partnership's assets on dissolution, or a valuation of stock upon a sale of a farming business lock, stock and barrel; (ii) the heading "Bond on obtaining letters of administration," which previously attracted a duty of 5s., with an insignificant exception; and (iii) the heading "Memorial" whereby a memorial to be registered in a register of deeds was required to be stamped either at the same rate as the instrument registered, if not exceeding 2s. 6d., or in other cases at 3s. 6d.

Certain other duties now abolished had already lost either all or most of the practical importance they ever had. In the first of these categories fall duties under the schedule headings relating to the surrender and grant of copyhold and customary estates, and in the second the duty charged under the heading "Grant or licence under the sign manual" to take and use a surname and arms or a surname alone, an item which used to cost £50 if the application was made pursuant to the injunctions of any will or settlement, but only £10 if the application was voluntarily made. All this will now be free, and perhaps the result will be a resurgence of that form of posthumous vanity which leads testators to bind their beneficiaries with name and arms clauses.

But the most important of the changes made by the Act is the concession in regard to conveyances on sale contained in s. 36. This section provides as follows:—

> (1) Any sale or contract or agreement for the sale of goods, wares or merchandise shall be disregarded for the purpose of the provisions mentioned in subs. (2) of this section in their application—
>
> (*a*) to any instrument chargeable under the heading "Conveyance or transfer on sale" in Sched. I to the Stamp Act, 1891, other than an actual conveyance or transfer of the goods, wares or merchandise (with or without other property); or
>
> (*b*) to any instrument chargeable by reference to that heading under s. 59 of that Act (which makes a contract or agreement for sale of certain property chargeable with duty as if it were an actual conveyance on sale).

The provisions mentioned in subs. (2) are the proviso to s. 73 of the Finance (1909–10) Act, 1910, and s. 54 (3) and (4) of the Finance Act, 1947, which provide for a lower rate of duty on a conveyance or transfer on sale in the case of transactions where the consideration does not exceed the respective limits of £500, £1,500 and £1,950, provided in each case that the instrument contains a certificate of value in the appropriate form certifying, in effect, that the transaction thereby effected is not one of a series of associated transactions whereof the aggregate consideration exceeds the appropriate limit.

The result of this provision is that a sale or agreement for the sale of goods, etc., associated with a conveyance of property which attracts stamp duty as a conveyance or transfer on sale, may now be disregarded under s. 36 (1) (*a*), unless that conveyance is itself a conveyance of the goods, etc. This qualification has been inserted with the caution one has come to expect in the language of Finance Acts, but in fact it has no practical importance at all. Goods are not usually "conveyed": they pass by delivery, and in that way attract no stamp duty. The effect of s. 36 (1) (*a*) of the Act may, therefore, be stated, broadly speaking, as follows: if in one and the same transaction of sale there is a conveyance of property by an instrument which in normal practice is stamped (e.g., a conveyance of land) and also a sale of goods which are passed by delivery, the value of the goods which pass by delivery may be disregarded in computing the consideration given for the other property for the purpose of deciding whether or not the conveyance of that property is such that a certificate of value can properly be included in the instrument of conveyance. Before this concession was made, if the premises upon which a business was carried on, valued at £475, were sold together with the stock, valued at £75, the consideration given for the goods (although the sale of the goods did not of itself necessarily, or normally, attract duty) had to be taken into account in computing the aggregate value of the consideration for the sale as a whole, for the purpose of ascertaining whether the lower rate of duty payable in the circumstances mentioned in s. 73 of the 1909–10 Act was applicable, so that in the example given the lower rate did not apply. Now the part of the consideration given for the goods is disregarded for this purpose, and the concession applies.

So far this provision has been considered in relation to an instrument chargeable as a conveyance or transfer on sale, but under s. 36 (1) (*b*) the concession is made applicable also in relation to contracts or agreements for sale which are chargeable to stamp duty as if they were conveyances, e.g., contracts for the sale of equitable interests in land. And s. 36 (3), in effect, provides that a certificate of value included in any instrument under the appropriate provision of the Acts of 1910 and 1947 is to be construed as leaving out of account any matter which, under subs. (1) of that section, may be disregarded for the purpose of ascertaining the applicability or otherwise of a lower duty concession. The form in which earlier legislation has required these certificates of value to be drawn is not, therefore, in any way affected.

This concession will be welcomed by the purchasers of small businesses, but it is important to bear in mind that it is not concerned in any way with what is sometimes the most valuable part of such businesses, the goodwill. Goodwill is a form of property for the purpose of the Stamp Act, 1891, and as it cannot be made to pass by delivery it must form the subject-matter either of an instrument of conveyance or of an agreement for sale. In the former case the conveyance itself attracts *ad valorem* duty, in the latter the contract is chargeable under s. 59 (1) of the Act of 1891, the rate of duty being in either case the same: in neither can the consideration attributable to the value of the goodwill be disregarded under the provisions of s. 36 of the present Act for the purpose of ascertaining the appropriate rate of duty on a conveyance of realty sold at the same time and as part of the same transaction as the goodwill.

"A B C"

Landlord and Tenant Notebook

PROGRESSIVE RENT AND STANDARD RENT

If the much-criticised draftsmen of the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, were ever asked to state what they had to say for themselves, they might point to the proviso to s. 12 (1) (*a*) of the Increase of Rent, etc. (Restrictions) Act, 1920, as an example of a provision which has given very little trouble. After enacting that " standard rent " means the rent at which the dwelling-house was let on 3rd August, 1914, or, where the dwelling-house was not let on that date, the rent at which it was last let before that date, or, in a case of a first letting after 3rd August, 1914, the rent at which it was first let, the section says : " Provided that, in the case of any dwelling-house let at a progressive rent payable under a tenancy agreement or lease, the maximum rent payable under such tenancy agreement or lease shall be the standard rent ; and where at the date by reference to which the standard rent is calculated, the rent was less than the rateable value the rateable value at that date shall be the standard rent." This proviso has figured in very few decisions. In the course of *Wheeler* v. *Wirral Estates, Ltd.* [1935] 1 K.B. 294 (C.A.), a suggestion that an increased rent paid by a tenant given the option of going or paying the increase was the standard rent was dismissed by Lord Wright, who observed that the Act made it clear what was meant was a rent under a single tenancy and one which rose automatically during the continuance of that tenancy. But the substantial question decided by that case was something quite different, namely, whether a letting by the Crown counted for standard rent-fixing purposes (held : it did). In *Bryanston Property Co., Ltd.* v. *Edwards* [1944] K.B. 32 (C.A.), a tenancy agreement made during the war reserved a rent of £275 a year, but one clause provided that as long as the war continued the landlord would allow a deduction of £85 a year ; Lord Greene, M.R., and Mackinnon, L.J., held that this was a case of a progressive rent within the meaning of the proviso, but du Parcq, L.J., preferred to base his decision, which came to the same, on the view that the higher figure had been the standard rent all along, though a deduction had been permitted for a temporary period only : " I feel a difficulty about saying that there is any question here of a progressive rent." Dealing with a substantially similar agreement in *Tedman* v. *Whicker* [1944] K.B. 112 (C.A.), a differently constituted court unanimously agreed with the view taken by Lord Greene, rejecting an argument that, the date of the increase being uncertain, the provision merely created a springing interest. The term in that case was for one year and then quarterly, and the same decision gave us authority for the proposition that a rent is none the less progressive because either party might prevent the increase from coming into effect. Both also show that provision for a single increase suffices ; once there is to be a change, the rent is progressive. *Langford Property Co., Ltd.* v. *Sommerfeld* (1948), 92 Sol. J. 408 (C.A.), endorses this view.

Nor does the most recent decision in which the proviso to s. 12 (1) (*a*) has operated reveal any obscurity ; it was the exact meaning of the " rent payable under the tenancy " and some doubt as to that of the adverb " where " in s. 12 (7)—" *Where* the *rent payable in respect of any tenancy* "—that were responsible for the litigation in *Woozley* v. *Woodhall Smith* (1949), 94 Sol. J. 13 (C.A.), which arose in this way : In 1937 the owner of a dwelling-house let it to one B for a term of twenty-nine years from Michaelmas of that year, this being, as far as could be established, the first letting ever. The rent reserved was £5 a year for the first eight years, £65 a year for the remaining twenty-one years. The term was assigned to the respondent who, in 1947, sub-let the house to the appellant (for the remainder of the term less three days) at £225 a year.

The material date, which was 3rd August, 1914, for old control purposes, is 1st September for those controlled by the Rent, etc., Restrictions Act, 1939. That Act applied to London houses of a rateable value not exceeding £100, and the dwelling-house concerned belonged to that category. But £5 was less, £65 was more, than two-thirds of that value, and by s. 12 (7) of the 1920 Act : " Where the rent payable in respect of any tenancy of any dwelling-house is less than two-thirds of the rateable value thereof, this Act shall not apply to that rent or tenancy . . . and this Act shall apply in respect of such dwelling-house as if no such tenancy existed or ever had existed." The appellant took out a summons to determine the standard rent (Rent, etc., Restrictions Act, 1923, s. 11) and the county court judge decided that s. 12 (7) directed him to ignore the 1937 lease and held that the first letting was that to the appellant and the standard rent therefore £225 a year. The Court of Appeal, after a careful analysis of the position, disagreed with this view and decided that £65 a year was the standard rent.

The judgment approached the problem in this way. The words " rent payable in respect of the tenancy " ought not to be read as meaning the rent payable at the inception of that tenancy ; if anyone, in answer to the question, " What was the rent payable under the tenancy which was in force on 1st September, 1939 ? " had said, " £5 a year," this answer would be misleading—and, indeed, untrue. The subsection does not say when payable—and there are various possibilities. One would be the time when the application to determine the standard rent was made to the court ; if that were correct, the matter would be simple, for s. 12 (7) would not apply and exclude the tenancy, while the proviso to s. 12 (1) (*a*) would make £5 a year the standard rent. Another possibility was that the time was to be whatever time was laid down by s. 12 (1) (*a*) as the material date for standard rent determination purposes, i.e., *prima facie* 1st September, 1939. But an answer to the suggestion that this entitled the landlord to say that £5 and not £65 was the figure to be considered and that s. 12 (7) excluded the tenancy accordingly was to be found in the words of s. 12 (1) (*a*) and its proviso itself. The latter does not say : " provided that, in the case of a progressive rent, the maximum rent payable under the tenancy shall be deemed to be the rent at which the house was let on 1st September, 1939 " ; what it says is that that maximum rent shall be deemed to be the standard rent. The proviso could be made explicit, without rewriting it, in this way : " Provided that, in the case of any dwelling-house let at a progressive rent, the rent at which it was let on 1st September, 1939, shall be taken to be the maximum rent payable under such tenancy and the latter shall be the standard rent."

On the question of the meaning of " where " in s. 12 (7) (" Where the rent payable . . . is less than two-thirds of the rateable value . . ."), the question arose whether the adverb meant " in cases in which " or " if and so long as." It could not, of course, be suggested that the " primary meaning " canon of construction applied ; the Act does

draw geographical distinctions, but this is clearly not an instance of such. The facts being what they were, the issue could not be affected, because, even if "where" meant "if and so long as" (and the court favoured this view) the lethal effect of s. 12 (7) ceased when the rent rose to £65, which was at Michaelmas, 1944.

Perhaps one might conclude by commending the sub-tenant's pertinacity in not waiting for the Landlord and Tenant (Rent Control) Act, 1949; for, assuming that a tribunal might have taken the same view as did the county court judge, and have accepted jurisdiction on the footing that the £225 was the standard rent, it is doubtful whether they would have reduced the figure by over 140 per cent.

R. B.

HERE AND THERE

PATENTS JUDGE

HILARY TERM opens with a new judge playing himself in. Even last term patent practitioners had their doubts whether, money being what it is in the Treasury, anything could be spared from the wigs and the dentures for another judicial salary, and consequently it was a question whether immediate advantage would be taken of the provision in the new Patents and Designs Act, 1949, authorising the appointment of a further judge to deal with patent matters. However, of the half-dozen "possibles" who were agreed to be in the running (the field was definitely restricted) it is Lloyd-Jacob, J., who has passed the post. The amusing thing is that those who know the state of patent litigation say that it will be a couple of years before there is a patent case available for him to try since he has been concerned as counsel in practically every matter going. Meanwhile, although attached to the Chancery Division, he has been seconded to the King's Bench to help diminish the lists in that overburdened Division. There, say the Chancery men, he is likely to arouse alarm and astonishment by a disconcerting way of actually reading in advance the papers in the cases he is to try.

CHANGING THE DIVISIONS

THE King's Bench lists are up by 514 cases since this time last year (as compared with the Court of Appeal and Chancery lists, which are down) and the unlooked-for outside relief of an extra judge is going to be particularly useful just at the period when provincial litigation is about to claim its customary priority over the metropolis, and the cycle of hearing, determination and delivery of the gaols from the Welsh mountains to the North Sea moves as with the rhythm of a natural law. With changes in the air that blows through the draughty corridors of the Law Courts there has been some talk of the possibility of patent matters themselves being transferred to the King's Bench. After all, save in the matter of the construction of documents, they have little inherent affinity to any of the other doings in the Chancery Division. Still, such a move would be against the trend so far maintained. Not so very long ago, for instance, bankruptcy was a King's Bench affair and in the present state of the lists it is far more likely that an attempt might be made to relieve them by putting the Revenue Paper into Chancery where its subtleties might well provide congenial employment for wits well sharpened on the grindstone of equity draughtsmanship.

GOOD-BYE TO INDIA

SADLY does the Judicial Committee of the Privy Council enter 1950 with lists shrunk to fourteen appeals, where once its oracles ranked high among our invisible exports. Canada provides one, Ceylon five, the Crown colonies six, with a prize case and an ecclesiastical appeal to make up the diminished muster. Litigants in India may well regret the blow that has severed them from the ultimate justice of the King in Council in which they had a well-founded confidence. Moreover, among a people for whom litigation ranked almost as a national sport, there was a very definite social prestige in having carried an appeal to this remote and, for some, almost legendary tribunal. The appellant who could adorn his name with the embellishment "A.P.C." had won a recognised distinction. There is a story, probably apocryphal, of an action started in one of the humblest courts in respect of an alleged trespass to A's land by B's cow. Up and up it went from appeal to appeal, until before the Judicial Committee it was discovered that A had no land and B had no cow. It remains to be seen whether Delhi will exercise the same magnetic attraction. In the hope that it may, divers English counsel are reported to be availing themselves of the possibility of enrolling themselves in the Supreme Court there. Should the Privy Council lists remain at a low ebb the unprecedented problem of a surplus of Law Lords may eventually have to be envisaged, to be solved ultimately by a diminished number of appointments. Below the judicial level the Indian withdrawal has brought about a change in the life of the only woman solicitor (or so I believe) practising before the Privy Council. For over two years she was assistant solicitor to the Indian High Commissioner in London. Soon, it is reported, she will take up her duties as prosecuting solicitor to the British Transport Commission.

RICHARD ROE.

CORRESPONDENCE

[*The views expressed by our correspondents are not necessarily those of* THE SOLICITORS' JOURNAL]

Sale of Mortgaged Registered Land

Sir,—In their letter on this subject which appeared in THE SOLICITORS' JOURNAL (vol. 93), dated 31st December, Messrs. J. A. Phillips & Co. stated that no land registry fee is payable for a search of the index map where the land is situated in the compulsory area.

The Chief Land Registrar would like to point out that on 8th April last this concession was extended to include searches of the index map in non-compulsory areas. The profession might like to be reminded of this.

I am, Sir,

H.M. Land Registry,
Lincoln's Inn Fields,
London, W.C.2.

Your obedient servant,
W. J. WAILING,
Chief Assistant.

[The extension of this concession was reported at 93 SOL. J. 241.—ED.]

BOOKS RECEIVED

Private Companies: Their Management and Statutory Obligations. By STANLEY BORRIE, Solicitor. Sixth Edition. 1949. pp. xii and (with Index) 220. London: Jordan & Sons, Ltd. 8s. 6d. net.

The Profits Tax Simplified. By ARTHUR REZ, B.Com. (Lond.), F.R.Econ.S., F.A.C.C.A. Second Edition. 1950. pp. 31. Stanmore: Berkeley Book Co., Ltd. 3s. net.

Introduction to Public Health Law. By JOHN J. CLARKE, M.A., F.S.S., of Gray's Inn and the Northern Circuit, Barrister-at-Law, Legal Member of the Town Planning Institute. 1950. pp. (with Index) 138. London: Cleaver-Hume Press, Ltd. 12s. 6d. net.

The International Law Quarterly. Vol. 3, No. 1. January, 1950. Editor: ZELMAN COWEN, B.C.L., M.A., LL.M. London: Stevens & Sons, Ltd. 10s. net.

Nisi Prius. Journal of the Law Societies in the University of Oxford. Vol. 1, No. 1. Hilary Term, 1950. Editor: M. H. FORD. Oxford: Keble College Law Society, Keble College. 1s. net.

NOTES OF CASES

COURT OF APPEAL

FUGITIVE OFFENDER: FRAUDS ALLEGED IN INDIA: DELAY

***In re* Henderson**

Tucker, Singleton and Jenkins, L.JJ.
7th November, 1949

Application for release from custody under s. 10 of the Fugitive Offenders Act, 1881.

Mr. Eastwood, the metropolitan magistrate, made an order under the Act of 1881 for the removal of the applicant to India on charges alleging that he had aided and abetted in the offence of cheating, contrary to the Indian Penal Code. The present application was made on the ground that it would be oppressive that an order for his removal should be made.

TUCKER, L.J., said that he would accept, without deciding, that, as had been conceded by counsel opposing the application, the true construction of s. 10 was that the court had to decide, having regard to all the matters specified in the section, whether it would be unjust or oppressive and too severe a punishment to send the applicant back to India either at all or until the expiration of a certain period. During the war he had held a commission in the Indian Army. It was in connection with service in Burma that the charges had been made. It appeared to the authorities in India that there had been a series of very serious frauds on the Government by contractors and other civilians in connection with certain works, and it was in reference to those alleged frauds that the particular charges against the applicant and other defendants had been preferred. The alleged frauds were on such a scale that it was considered necessary by the authorities in India to set up a special tribunal under the appropriate statutory authority. The evidence and matters to be considered were extremely complicated. It was clear that the applicant's embarkation from India for the United Kingdom on 1st January, 1948, was due to an oversight or irregularity on the part of the military authorities. The Government of India were in no way connected with the oversight, or to blame for the applicant's return here, which that Government had not desired. There was nothing in the material before the court to show that it was impossible for the applicant to obtain justice. The charges were very serious and large sums of money were involved. The applicant had failed to make out his case under s. 10. The case was unusual, particularly on account of the great delay which had, inevitably, occurred, the allegations in question going back to 1942. That delay had necessitated careful consideration of the case. It had received such consideration, and the application should be refused.

SINGLETON and JENKINS, L.JJ., gave concurring judgments.

APPEARANCES: *Edward Steel* (*Wallis Jones & Co.*); *B. J. M. MacKenna* (*the Solicitor, India House*); *H. L. Parker* (*Treasury Solicitor*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

LANDLORD AND TENANT (RENT CONTROL) ACT, 1949: RETROSPECTIVE EFFECT

Hutchinson *v.* Jauncey

Evershed, M.R., Cohen and Asquith, L.JJ.
20th December, 1949

Appeal from Edmonton County Court.

Before 21st March, 1949, the defendant was the tenant of a whole house at a rent of 11s. 1d. a week. In October, 1945, he sub-let two rooms on the first floor with the use of the scullery for cooking purposes in common with himself to the plaintiff at 7s. a week, retaining two rooms on the ground floor for his own use. On 21st March, 1949, the sub-tenant bought the house, subject to the defendant's tenancy. On 11th April, 1949, the sub-tenant, as landlord, served a valid notice to quit on the defendant. On 25th May, 1949, the landlord started proceedings for possession of the house. On 2nd June, 1949, the Landlord and Tenant (Rent Control) Act, 1949, came into force. On 22nd July the county court judge made an order for possession on the ground that the tenancy was not protected by the Rent Restriction Acts, in that the tenant shared the scullery with a sub-tenant, and that it was not protected by s. 9 of the Act of 1949, which abrogates the rule in *Neale* v. *del Soto* [1945] K.B. 144 whereby sharing agreements are outside the Acts, because the proceedings for possession were started before that Act came into force. The tenant appealed. By s. 9: "Where the tenant of any premises . . . has sub-let a part, but not the whole of the premises, then as against his landlord or any superior landlord . . . no part of the premises shall be treated as not being a dwelling-house to which the principal Acts apply by reason only—(*a*) that the terms on which any person claiming under the tenant holds any part of the premises include the use of accommodation in common with other persons . . ." By s. 10: "The three last foregoing sections shall apply whether the letting in question began before or after the commencement of this Act, but not so as to affect rent in respect of any period before the commencement thereof or anything done or omitted during any such period."

EVERSHED, M.R., said that it was clear from *Remon* v. *City of London Real Property Co., Ltd.* [1921] 1 K.B. 49 that, but for the issue of the summons for possession, when the Act of 1949 came into operation the tenant would have been entitled to claim the benefits of the Rent Restriction Acts notwithstanding the service of an effective notice to quit. The real question, therefore, was what difference, if any, the issue of the plaint made. It was contended for the landlord that, by the issue of the plaint before the coming into force of the Act, he had acquired a vested right of which he could not be deprived unless that result in plain terms flowed from the language of the new Act. In his (his lordship's) view, s. 9 applied in the clearest terms to the present tenancy. In s. 10 the reference to "rent" showed clearly that the later words "anything done" could not refer to such a step being taken as the issuing of a summons, nor could they refer to a notice to quit. It was impossible, on a fair reading of ss. 9 and 10, to say that the latter meant that s. 9 was not to apply to any pending cause of action. It must mean to refer to some act whereby the tenant had gone out of possession, or paid something, or done something on the footing that he was unprotected before the Act came into force. The tenant here had done none of those things. He was protected by the Acts and the appeal would be allowed.

COHEN and ASQUITH, L.JJ., agreed. Appeal allowed.

APPEARANCES: *Sofer* (*Avery, Son & Fairbairn*); *de V. Shortt* (*H. B. Wedlake, Saint & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

CHANCERY DIVISION

JOINT TENANCY OR TENANCY IN COMMON

***In re* Davies, deceased: Public Trustee *v.* Davies**

Danckwerts, J. 20th December, 1949

Adjourned summons.

The testator, D. H. Davies, made his will in 1914 and died in 1916. The summons was issued in 1917 to determine various questions arising on the will and orders were made therein by Sargant and Younger, JJ. Further questions arose on the death of a tenant for life, but only one calls for any report. The testator had directed his trustees to hold certain house property in Western Road, Brighton, on trust after payment off of mortgages to pay the income to his three children in equal shares and after the death of all his said children on trust for a class of grandchildren. One child had now died and the question for decision was how the income of his share was disposed of.

DANCKWERTS, J., said it was admitted that the surviving children were entitled to the whole of the income until the period of distribution, but the question was whether they took as tenants in common with cross-remainders between them, or as joint tenants. The point was material because if they were tenants in common there was a trust for sale vested in the Public Trustee, but in the other alternative the children would be joint tenants for life under the Settled Land Act, 1925, s. 19, and would be entitled to retain the land. There were a number of authorities on the matter, several of which had been referred to. The earlier cases indicated a preference for a joint tenancy. More modern cases were *In re Hobson* [1912] 1 Ch. 626, a decision of Parker, J., and *In re Tate* [1914] 2 Ch. 182, and *In re Stanley's Settlement* [1916] 2 Ch. 50, both decisions of Sargant, J. Here he thought that the words "in equal shares" indicated a tenancy in common, rather than a joint tenancy. Therefore, there was a tenancy in common with an implied gift over on the death of any of the children of his or her share whether original or accruing to the survivors or survivor.

APPEARANCES: *H. A. Rose; Michael Bowles; Maurice Berkeley; Owen Swingland* (*Blakeney & Marsden Popple*, for *Cyril E. Wheeler*, Brighton).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

PURCHASE OF ANNUITY: CLAIM TO ESTATE DUTY

In re Earl Fitzwilliam's Agreement; Peacock *v.* Inland Revenue Commissioners

Danckwerts, J. 21st December, 1949

Adjourned summons.

The summons was taken out by the trustees of a family settlement made by the seventh Earl Fitzwilliam in 1933, in which he took no beneficial interest, but his son Lord Wilton was entitled, to determine whether estate duty was payable in the following circumstances. In 1934 the Earl, then sixty-two years of age, contracted with the trustees of the settlement to purchase from them an annuity of £50,000 for his life in consideration of the transfer by him to the trustees of colliery shares and policies of assurance, the then value of which was £375,000, being the full actuarial value of the annuity. The Commissioners contended that on the death of the seventh Earl in 1943 estate duty was payable on the property under the Finance Act, 1894, s. 2 (1) (*c*), as property which must be deemed to pass under a disposition within s. 38 of the Customs and Inland Revenue Act, 1881, a provision re-enacted by the Finance Act, 1894, with the omission of the word "voluntary." The Crown also relied on s. 44 of the Finance Act, 1940. The trustees contended that the transaction being one for full money's worth, these sections were not material. The value of the securities was now said to be £548,000. (*Cur. adv. vult.*)

DANCKWERTS, J., said that if the Legislature intended to make such a striking change as to include sales for full monetary value in the former provisions relating to gifts, it seemed that an odd method of carrying out such a change was adopted. But the Commissioners contended that the words "gift," "donor" and "donee" were words with a wide meaning and often had reference to transfers. There was no decided case holding that a sale for full value in money was within the provisions in question, but a number of authorities were cited as bearing on the point, and the arguments for the Crown were mainly based on the Irish case of *Att.-Gen.* v. *Smyth* [1905] 2 Ir. R. 553 and the judgment therein of Palles, C.B. He (his lordship) thought that the decision in that case might have been perfectly correct, but he could not accept some of the reasoning of Palles, C.B. However, his judgment had received approval from Lord Dunedin and Lord Blanesburgh, but in cases where the transaction was not one for monetary value, but operated under a marriage contract. The Commissioners further contended that if the provisions of an earlier statute were doubtful, it was permissible to look at later statutes in order to ascertain their meaning (*Ormond Investment Co.* v. *Betts* [1928] A.C. 143 and other cases). Here it was impossible to make any such deduction from the obscure and complicated provisions in question. A taxing statute must be clear in bringing property within its charge; there was no room for intendment or implication (*Cape Brandy Syndicate* v. *I.R.C.* [1921] 1 K.B. 64, at p. 71). In the present case the one thing that was clear was that the statutory provisions said to impose liability were obscure. The application of certain judicial statements which were purely *obiter* would give a construction to the provisions beyond anything decided by any of the courts and carry the burden of taxation imposed in 1894 far beyond the subject-matter of the cases in which they occurred. It would not be right to attribute to the draftsman of the Finance Act, 1894, an intention to impose on the Customs and Inland Revenue Acts, 1881 and 1889, the far-reaching changes for which the Commissioners contended, and he could not find in those statutory provisions words clearly imposing tax in the present case. There would be a declaration that on the death of the seventh Earl in 1943 no estate duty became payable on the funds in question.

APPEARANCES: *Gerald Upjohn*, K.C., and *N. C. Armitage* (*Warren, Murton & Co.*, for *Newman & Bond*, Barnsley); *Sir Frank Soskice*, S.-G., and *J. H. Stamp* (*Solicitor of Inland Revenue*).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

INCOME TAX: ACTOR'S CONTRACTS

Purchase *v.* Stainer's Executors

Croom-Johnson, J. 1st November, 1949

Case stated by the Income Tax Special Commissioners.

Payments were made to the executors of Leslie Howard (Stainer), the film actor, director and producer, which accrued due under film contracts made by the actor before his death from enemy action in 1943. The payments in question were in respect of shares of receipts on profits which could not be ascertained until some time after the work under the contracts had been completed. His executors objected to being assessed to income tax under Sched. D to the Income Tax Act, 1918, for the years 1944–45, 1945–46 and 1946–47 in respect of those payments. The Crown contended that the amounts so received were "annual payments" assessable under Case III of Sched. D, or, alternatively, that they came under Case VI of the Schedule as being "annual profits or gains not falling under any of the foregoing cases and not charged by virtue of any other schedule." The commissioners held that the share of profits or receipts could not be taxed as annual payments under Case III, but remained the emoluments of a profession taxable under Case II; but that, as the actor had died in 1943, assessments under that case were not competent for the years 1945–47, as in fact the Crown admitted; and that, as all the emoluments fell under Case II they could not be charged under either Case III or Case VI. The commissioners accordingly discharged the assessments. The Crown appealed.

CROOM-JOHNSON, J., said that the amounts received by the executors under the contracts were of the nature of deferred remuneration which had already been earned by the deceased under them. It had been contended for the Crown that the payments were contingent; but there was no contingency about it. True, some of the amounts due were not ascertained during the lifetime of the deceased, but they were already debts owing to him in respect of his vocation. It was common ground that, as he had died, those amounts were not assessable to tax under Case II of Sched. D, but it had been contended that the Crown was entitled, after his death, to change the heading under which the assessments should be made, and that the moneys received by the executors were annual payments taxable as such. The payments, however, remained payable only for services rendered by the deceased,

and for no other reason. Neither Case III nor Case VI was applicable. The commissioners had come to a right conclusion. Appeal dismissed.

APPEARANCES: *Sir Frank Soskice*, K.C. (S.-G.), and *Hills* (*Solicitor of Inland Revenue*); *Graham-Dixon* (*Walter, Burgis and Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

INCOME TAX: THEFT OF MONEY SET ASIDE FOR P.A.Y.E.

Attorney-General *v.* Antoine

Croom-Johnson, J. 2nd November, 1949

English information.

The defendant set aside in a safe money deducted from her employees' wages under the P.A.Y.E. system. Each month she used to pay over to the Revenue authorities the money thus set aside. £32 13s.—in Treasury notes and coins thus earmarked—was stolen from her safe by a thief. She informed the inspector of taxes of the theft, but the Crown, contending that she was responsible for the money, claimed from her in this action the deficiency in her account with the Revenue authorities resulting from the loss.

CROOM-JOHNSON, J., said that the bag of money was the property of the defendant and was not at the risk of the Crown. Had she used the money for her own purposes, she would not have committed any offence. The judgments of Scrutton and Atkin, L.JJ., in *Attorney-General* v. *Wilts United Dairies, Ltd.* (1921), 37 T.L.R. 884, enshrined the well-known constitutional proposition that there could be no tax without the authority of Parliament. In applying that principle he (his lordship) must be certain of not falling into the error of confusing a tax demanded of the employer, which this was not, and a liability to account for moneys, which, under s. 2 (1) (*a*) of the Income Tax (Employments) Act, 1943, the employer had deducted from the wages of her employees, which this was. Once it was made clear that there was a duty to account laid down in terms by Parliament, so that the constitutional point was so far satisfied, and once it was shown that the employer had not accounted, the situation was that, under the regulations, she became liable to pay over those sums which she had deducted, for which she had not accounted, and which she had not, by reason of what had occurred here, paid over to the Revenue authorities. The money was no more a tax on the employer than any other deduction which the employer made. If a person liable to pay, for example, interest on an annuity, and under a duty to deduct tax at source, chose to place the money in a bureau, or in a chest of drawers, or a safe, or any other receptable, and the money was lost, it was absurd for him to say that the money was at the risk of the Revenue. Judgement for the Crown for £28 17s.

APPEARANCES: *Sir Frank Soskice*, K.C. (S.-G.), and *Hills* (*Solicitor of Inland Revenue*); *Rodger Winn* (*Rawlinson and Son*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

PRIZE: SHIPS CAPTURED IN ENEMY PORT

"The Antonia C."

Lord Merriman, P. (in Prize). 8th November, 1949

Application for condemnation in prize.

The port of Massawa, in Italian Somaliland, was occupied by British forces in 1941. In 1947 a number of vessels scuttled there by the Italian navy were seized. Of these the *Antonia C.* had been taken out a mile and a half into deep water in Harkiko Bay and scuttled to the southward of Sheikh Said Island, on which the southern of the two lights of Massawa Harbour was situated.

LORD MERRIMAN, P., said that the questions now arose whether the place itself could be said to be within the limits of the harbour, and whether the *Antonia C.* was still a vessel which could fairly be said to be the subject of prize. It was clear that the *Antonia C.* was scuttled as a ship because the port was about to be captured by British forces. If she could clearly be said to be within the port a few days later when the port was captured, then she was captured as a ship and was recoverable in prize and not as a piece of wreckage at the bottom of the sea. Whether the vessel was captured with the port was a question of degree, and he thought this a borderline case. He was satisfied that the vessel should be taken to have been captured when the harbour itself was captured. He wished, however, to emphasise that the progress from one degree to another could not be taken to be likely to proceed indefinitely without check. In the circumstances the vessel was condemnable in prize. Decree accordingly.

APPEARANCES: *Hogg* (*Treasury Solicitor*) for the Procurator General.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RUSSIAN WIVES: HUSBANDS' PETITIONS

Way *v.* Way; Rowley *v.* Rowley; Kenward *v.* Kenward; Whitehead *v.* Whitehead

Hodson, J. 9th November, 1949

Petitions for decrees of nullity.

The four petitioners, who were British, during the second world war married Russian women in register offices in Russia before Russian officials. Apart from reliefs sought by two of the petitioners on other grounds, all four contended that their marriages were void; that marriage as understood in the U.S.S.R. did not comply with the essentials of marriage according to English law; that the ceremonies did no in English law constitute valid marriages; alternatively, that their marriages were void for want of consent, and in the further alternative that the marriages had been frustrated.

HODSON, J., said that, in view of *Nachimson* v. *Nachimson* [1930] P. 217, the first contention had not been pressed. Nor was argument addressed on the doctrine of frustration, which had never been applied to the status of marriage as opposed to a contract to marry (see *Niboyet* v. *Niboyet* (1875), 4 P.D. 1). The husbands relied on absence of consent and, in addition, sought to maintain that the marriages were void for want of form. The requirements on registering a marriage in Russia were mutual consent, marriageable age, and the production of documents certifying identity and indicating, *inter alia*, that the parties were mutually aware of the state of each other's health. That certain other formalities had not been complied with was not in itself sufficient to invalidate the marriages. *Apt* v. *Apt* [1947] P. 127; [1948] P. 83, supported the view that questions of consent were to be determined by reference to the personal law of the parties rather than by reference to the law of the place where the contract was made. It was justifiable and consistent with authority to apply the matrimonial law of each of the parties. Since all the husbands were domiciled in England, the law of England applied to the question whether they consented to their marriages. It was said that they entered into marriage in the mistaken belief (*a*) that the administrative Soviet practice of granting permission to wives of foreigners to leave the Soviet Union with their husbands would continue as it had done before the marriages took place; (*b*) that they would be permitted to go to see their wives after they had parted from them; (*c*) that the marriages entered into imposed a duty on the spouses to live together, whereas in fact, by s. 9 of the Russian Code, no such duty was imposed on them. As to (*c*), there was no authority for introducing into the law of England a provision that mistakes of that kind might invalidate a marriage. The rights and duties between spouses would vary according to the law of the domicile of the married pair, and there was no ground for avoiding the marriage for mistake because the rights and duties imposed on persons domiciled in Russia who married were different from those imposed by other countries. No attempt had been made to argue that a Russian marriage did not fulfil the requisites of a Christian marriage. As to

(*a*) and (*b*), it was true that the petitioners hoped that the normal relationship of man and wife would be recognised and observed. It was also true that it shocked the conscience that human relations should be ignored by a Government which had in fact prevented these wives from joining their husbands. It did not, however, follow that the failure of the Soviet Government to act in accordance with international usage would avoid the marriages on the ground of mistake. He felt bound to hold that it did not. The prayers for nullity on the ground that the marriages were void therefore failed.

APPEARANCES: *Idelson*, K.C., *and J. E. S. Simon* (*Boyce, Evans & Sheppard*).

The wives did not appear and were not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

COURT OF CRIMINAL APPEAL

CORRECTIVE TRAINING: PRINCIPLES OF IMPOSITION

R. *v.* Apicella

Lord Goddard, C.J., Hilbery and Birkett, JJ.
7th November, 1949

Application for leave to appeal against conviction.

The applicant was convicted at Essex Quarter Sessions of stealing, and was sentenced to two years' corrective training.

BIRKETT, J., delivering the judgment of the court, said that s. 21 of the Criminal Justice Act, 1948, empowered the court in certain circumstances to pass a sentence of corrective training when certain conditions were fulfilled; but the mere fulfilment of the conditions laid down was not of itself a reason why a sentence of corrective training should be imposed. That sentence was designed, in the view of the court, to be in some degree an extension of the principles underlying Borstal treatment. The court must consider all the facts of the case and the design of the statute before imposing the sentence. It was important that the minds of those who had to administer the Act should be drawn to this matter, and that they should be satisfied before passing a sentence of corrective training that all the facts of the case justified such a sentence. With regard to sentences alike of preventive detention and corrective training, it was the duty of the court to see that the statutory conditions were fulfilled and the view of the Prison Commissioners considered; but, when that had been done, it was the duty of the court to weigh all the facts and then to decide on the appropriate form of punishment. Mere fulfilment of the statutory conditions did not make sentence automatic. Application refused.

APPEARANCES: None.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PRACTICE NOTE

PRACTICE: CRIMINAL JUSTICE ACT, 1948

12th December, 1949

LORD GODDARD, C.J., made the following statement on two matters of practice arising under ss. 21 to 23 of the Criminal Justice Act, 1948.

We are told that certain chief officers of police have raised the question whether, when they serve on a prisoner notice of intention to prove previous convictions in accordance with s. 23 (1) and invite him to say whether he admits them or not, it is necessary to administer a caution. In the opinion of the court, it is not necessary that any caution should be administered when police officers are serving the appropriate notices.

Secondly, we are told that there has been an inquiry from a borough quarter sessions whether or not a police officer can give evidence of the contents of a notice of intention to prove previous convictions that he serves on a prisoner without giving notice to produce the notice so served. I am surprised that this question should have been raised, because I thought it a well-known rule in the law of evidence relating to documents that no notice to produce a notice need ever be given.

The classic case is that of a notice to quit where an action is brought to recover possession of land. No notice to produce that notice is ever necessary. If authority were wanted, it is in *R.* v. *Turner* [1910] 1 K.B. 346, where Channell, J., pointed out that if it were necessary to give notice to produce the notice, it would be necessary to give notice to produce the notice to produce, and so on *ad infinitum*. Chairmen of quarter sessions can rest assured that it is not necessary to give notice to produce the notice which has been served on a prisoner under s. 23 (1) of the Act of 1948.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Aberdeen-Huntly-Fochabers Trunk Road (Corsehill and Chapel of Stoneywood Diversions) Order, 1949. (S.I. 1949 No. 2464.)

Boot and Shoe Repairing Wages Council (Great Britain) (Constitution) Order, 1950. (S.I. 1950 No. 15.)

Calf Rearing Scheme (England, Wales and Northern Ireland) (Extension and Payment) Order, 1950. (S.I. 1950 No. 41.)

Control of Paint (Revocation) Order, 1950. (S.I. 1950 No. 24.)

Dolgelley-Bala-Ruthin-Queensferry-South of Birkenhead Trunk Road (Drwsynant Diversion) Order, 1949. (S.I. 1949 No. 2467.)

Drying of Vegetables (Revocation) Order, 1950. (S.I. 1950 No. 7.)

Emergency Powers (Defence) Road Vehicles and Drivers (Revocation) Order, 1950. (S.I. 1950 No. 13.)

Export of Goods (Control) (Consolidation) Order, 1949. (S.I. 1949 No. 2466.)

Fire Services (Ranks and Conditions of Service) Regulations, 1950. (S.I. 1950 No. 38.)

Gas (Conversion Date) (No. 11) Order, 1950. (S.I. 1950 No. 10.)

Hops Marketing Scheme (Amendment) Order, 1949. (S.I. 1949 No. 2456.)

Income Tax (Applications for Increase of Wear and Tear Percentages) Regulations, 1950. (S.I. 1950 No. 3.)

Increase of Pensions (Calculation of Income) (Supplemental) Regulations, 1950. (S.I. 1950 No. 34.)

Ipswich - Newmarket - Cambridge - St. Neots - Bedford - Northampton-Weedon Trunk Road (Maynewater Lane, Bury St. Edmunds) Order, 1949. (S.I. 1949 No. 2458.)

Land Drainage (River Boards) General Regulations, 1950. (S.I. 1950 No. 16.)

London-Carlisle-Glasgow-Inverness Trunk Road (Harthope and other Diversions) Order, 1949. (S.I. 1949 No. 2463.)

London-Fishguard Trunk Road (Cowbridge By-Pass) Order, 1950. (S.I. 1950 No. 23.)

London-Fishguard Trunk Road (Port Talbot By-Pass) Order, 1949. (S.I. 1949 No. 2459.)

London Traffic (Prescribed Routes) (No. 35) Regulations, 1949. (S.I. 1949 No. 2455.)

Lothians and Peebles Police (Amalgamation) Order, 1950. (S.I. 1950 No. 36.)

Norman Cross-Grimsby Trunk Road (Brackenborough Lawn Diversion) Order, 1949. (S.I. 1949 No. 2460.)

Public Health (Aircraft) Regulations, 1950. (S.I. 1950 No. 6.) These regulations deal mainly with the control of infected aircraft entering this country and supersede, with minor alterations, the Public Health (Aircraft) Regulations, 1948.

Purchase Tax (No. 6) Order, 1949. (S.I. 1949 No. 2453.)

Railways (Transport of Potatoes) Direction, 1950. (S.I. 1950 No. 19.)

River Eden Catchment Board (Reconstitution of the Burgh by Sands, Beaumont and Orton Drainage Board) Order, 1949. (S.I. 1950 No. 5.)

River Great Ouse Catchment Board (Upwell and Nordelph Internal Drainage Districts) Order, 1949. (S.I. 1950 No. 17.)

River Great Ouse Catchment Board (Upwell and Nordelph Internal Drainage Districts) (Appointed Day) Order, 1950. (S.I. 1950 No. 18.)

Rope, Twine and Net Wages Council (Great Britain) Wages Regulation (Holidays) Order, 1950. (S.I. 1950 No. 14.)

Stopping up of Highways (Derbyshire) (No. 2) Order, 1949. (S.I. 1949 No. 2457.)

Stopping up of Highways (Middlesex) (No. 1) Order, 1950. (S.I. 1950 No. 22.)

Stopping up of Highways (Monmouthshire) (No. 3) Order, 1949. (S.I. 1949 No. 2465.)

Superannuation (Appointment of End of War Period) Order, 1950. (S.I. 1950 No. 42.)

Teachers Superannuation (Royal Air Force) (Locally Engaged Teachers) Scheme, 1950. (S.I. 1950 No. 21.)

Trading with the Enemy (Authorisation) (Japan) Order, 1950. (S.I. 1950 No. 28.)

Trading with the Enemy (Custodian) (Amendment) (Japan) Order, 1950. (S.I. 1950 No. 30.)

Trading with the Enemy (Transfer of Negotiable Instruments, etc.) (Japan) Order, 1950. (S.I. 1950 No. 29.)

Utility Corsets (Manufacture and Supply) (Amendment No. 3) Order, 1950. (S.I. 1950 No. 25.)

Weir Wood Water Order, 1949. (S.I. 1950 No. 37.)

Wild Birds Protection (Isle of Ely) Order, 1950. (S.I. 1950 No. 9.)

NOTES AND NEWS

Honours and Appointments

Mr. P. A. CLARKE, assistant solicitor to Colchester Corporation, has been appointed assistant solicitor to the County Borough of Derby.

Mr. HARRY HARRIS, deputy clerk of Meltham Urban District Council, has been appointed clerk to the council.

Miss MYFANWY HOWELLS has been appointed assistant solicitor at Sutton Coldfield in succession to Mr. A. G. Davies, assistant town clerk, who has gone into private practice.

Mr. D. GLANMOR JONES, solicitor, of Dolgelley, has been appointed deputy coroner for Merionethshire.

Miss E. M. NEVILLE, of Liverpool, has been appointed the first woman solicitor to be engaged by the Southport Corporation, and will be engaged principally in conveyancing, with some prosecution work.

Mrs. ALICE PREST, assistant solicitor to the High Commissioner for India in London, has been appointed a prosecuting solicitor to the British Transport Commission.

Mr. J. ST. L. STALLWOOD, who resides at Mortimer, near Reading, and was formerly in business as a solicitor in the town, has been appointed by the London County Council to be a member of the Valuation Panel constituting the new Assessment Appeal Court for Central London. He is the chairman of the Holborn Assessment Committee.

Mr. H. A. C. STURGESS, Librarian and Keeper of the Records, Middle Temple, and Mr. ROY ROBINSON, Sub-Treasurer of the Inner Temple, received the M.V.O. in the New Year Honours.

Mr. G. TAYLOR, chief assistant and deputy clerk to the Stoke-on-Trent City Justices since April, 1948, has been appointed magistrates' clerk at Solihull in succession to Mr. H. T. Horton, who has retired.

The Lord Chancellor has decided to appoint Mr. WILLIAM LISTER PENGELLY to be a Master of the Supreme Court of Judicature, Chancery Division, on 3rd July, in the place of Master Mosse who, at the Lord Chancellor's request, will remain in office until that date.

The Lord Chancellor has appointed Mr. GEOFFREY WALTER WRANGHAM, of Clarendon House, Boston Spa, Yorkshire, to succeed the late Judge St. John Field, K.C., as Judge of the County Courts on Circuit 20 (Leicestershire, etc.), on the 22nd January, 1950.

Personal Notes

On behalf of the Ilminster Petty Sessional Division, Mr. Kenneth Macassey, chairman of Chard magistrates, presented an inscribed silver salver and pencil to Major J. Duke, who recently retired after forty-two years as clerk to the magistrates.

Mr. Alan L. Fullalove, solicitor, of Market Place, Wantage, Berks, has been appointed secretary of the North Berks Musical Festival.

Mr. J. B. Maudsley, solicitor, of Maidenhead, has been elected to the committee of the Maidenhead Chamber of Commerce.

A tribute to the work done by Mr. C. A. Potter during the time that he has been solicitor in charge of the Services Divorces Department of The Law Society, in the area which includes Gloucester, was paid by Mr. Commissioner Hurst at Gloucester Divorce Court, on 11th January. Mr. Potter, whose offices are at Bristol, is leaving to take up an appointment under the Legal Aid Scheme, as secretary for the south-eastern area.

Miscellaneous

Applicants for Silk who wish their names to be considered for the next list of recommendations should send their applications to the Lord Chancellor's Office before Wednesday, 1st March, 1950. Those who have already made applications should renew them before that date.

Lord Chancellor's Office,
11th January, 1950. House of Lords, S.W.1.

A meeting of the Council of Judges of the Supreme Court was held on 10th January, 1950, and the following matters were considered :—

Vacations in the Supreme Court

The Council recommended that an Order in Council should be made providing that the Long Vacation should in future begin on the 1st August and end on the 30th September and that the Rules of the Supreme Court should be amended accordingly.

Hours of Work of the Supreme Court

The Council recommended that the Judges of the Supreme Court should normally sit from 10.30 a.m. to 4.15 p.m., with an interval for luncheon.

The Lord Chancellor concurred in both these recommendations.

The Royal Society of Arts, John Adam Street, Adelphi, W.C.2, announce that a paper entitled "Are town planners planning too far ahead ?" will be read on 1st February, at 2.30 p.m., by Mr. E. Munro Runtz, F.R.I.C.S., of Messrs. Farebrother, Ellis & Co. The chair will be taken by Mr. Derek Walker-Smith, M.P.

SOCIETIES

At the monthly meeting of the Board of Directors of the SOLICITORS' BENEVOLENT ASSOCIATION, held on the 4th January, 1950, 48 solicitors were admitted to membership of the Association, bringing the total membership up to 7,493. Through The Law Society a further consignment of food parcels from the Christchurch, New Zealand, Law Society has been distributed to over 100 beneficiaries of the Association and many grateful letters of thanks have been received. A sum of £3,983 10s. was distributed in relief to 44 beneficiaries; of this sum £2,032 10s. was in payment of annuities. All solicitors on the roll for England and Wales are eligible for membership of the Association and are asked to write to the Secretary at 12 Clifford's Inn, Fleet Street, London, E.C.4, for further information. The annual subscription is £1 1s. (minimum)—life membership subscription £10 10s.

The HALDANE SOCIETY (all meetings in the Niblett Hall, Inner Temple, London, E.C.4, at 7 p.m.) announces the following programme for Hilary Term, 1950: Tuesday, 31st January, "The postponing of the Legal Aid and Advice Act, 1949"; February (to be announced), "The U.S. Constitution, the Smith Act, and the trial of the American Communists," speaker: Professor Harold Laski; Wednesday, 8th March, "Social implications of Town Planning," speaker: D. P. Kerrigan; Wednesday, 29th March, "The operation of the Criminal Justice Act, 1948."

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: 88-90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication)